

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT L. ODOM,	§	
	§	No. 26, 2012
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Sussex County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0301006628
Appellee.	§	

Submitted: June 11, 2012

Decided: August 24, 2012

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

O R D E R

This 24th day of August 2012, upon consideration of the appellant's opening brief and the appellee's motion to affirm, it appears to the Court that:

(1) In 2003, the appellant, Robert L. Odom, pled guilty to three criminal offenses and was sentenced to a total of sixteen years suspended after five years and completion of the Key Program, for one year of the Residential Substance Abuse Treatment Program and two years of Aftercare.

(2) In December 2011, Odom was charged with his sixth violation of probation (VOP). At the VOP hearing on December 21, 2011, Odom,

through counsel, admitted all of the allegations except one. The Superior Court then resentenced Odom to a total of eight years suspended after four years and successful completion of the Key Program, for one year of the Residential Substance Abuse Treatment Program and one year of probation. This appeal followed.

(3) Odom claims for the first time on appeal that his due process rights were violated when the Superior Court conducted the VOP hearing the day before the scheduled hearing date.¹ According to Odom, by holding the hearing the day before the scheduled hearing date the Superior Court prevented him from presenting his probation officer's sentencing recommendation.

(4) We have reviewed Odom's claim for plain error and have found none.² The Superior Court is not obligated to follow a sentencing recommendation made by a probation officer.³ Odom's claim is denied for lack of prejudice.

¹ The record reflects that the December 21, 2011 VOP hearing was noticed for December 22, 2011.

² "To obtain a reversal based upon the plain error standard of appellate review, the appellant has the burden of demonstrating that the error complained of is so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process." *Moody v. State*, 988 A.2d 451, 453 (Del. 2010) (quoting *Flamer v. State*, 953 A.2d 130, 133 (Del. 2008)).

³ See, e.g., *Cruz v. State*, 990 A.2d 409, 417 (Del. 2010) (holding that the Superior Court had discretion, given the probationer's history of violating probation, to impose a prison term notwithstanding the recommendation of the probation officer).

(5) Odom alleges that his due process rights were violated when he was adjudged guilty of VOP on the basis of criminal conduct for which he was not prosecuted. There is no merit to Odom's claim. It is irrelevant that Odom's VOP conviction was based on criminal conduct for which he was not prosecuted.⁴ The Superior Court has the authority to revoke probation upon a finding "that the probationer's conduct has not been as good as required under the conditions of probation."⁵

(6) Odom claims that the Superior Court sentenced him with a closed mind.⁶ Having reviewed the transcript of the VOP hearing, however, the Court can discern no support for Odom's claim.

(7) Finally, Odom complains that a curfew violation occurred because he relied in good faith on the Superior Court's mistaken assurance at a past VOP hearing that he was allowed to leave the State of Delaware when serving Level I probation. Odom's claim concerning a past VOP hearing is not relevant to this appeal, and his arguments to the contrary, including his argument that the Superior Court should have provided him with a transcript of the past VOP hearing, are without merit.

⁴ Cf. *Cruz v. State*, 990 A.2d 409 (Del. 2010) (affirming VOP conviction notwithstanding probationer's prior acquittal of new criminal charges on which VOP was based).

⁵ *Kurzmann v. State*, 903 A.2d 702, 717 (Del. 2006).

⁶ "A judge sentences with a closed mind when the sentence is based on a preconceived bias without consideration of the nature of the offense or the character of the defendant." *Cruz v. State*, 990 A.2d 409, 416 (Del. 2010) (quoting *Weston v. State*, 832 A.2d 742, 746 (Del. 2003)).

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice